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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/037,766	10/23/2001	Chaoying Zhang	AUD1P009	7541
22434	7590	01/12/2005	EXAMINER	
BEYER WEAVER & THOMAS LLP			HARVEY, DIONNE	
P.O. BOX 70250			ART UNIT	PAPER NUMBER
OAKLAND, CA 94612-0250			2643	

DATE MAILED: 01/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/037,766	ZHANG ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Dionne N Harvey	2643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on \_\_\_\_.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) 18 and 24 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_ is/are allowed.
- 6) Claim(s) 1-17, 19-23 and 25-33 is/are rejected.
- 7) Claim(s) \_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date: ____   |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date: ____   | 6) <input type="checkbox"/> Other: ____                                     |

## DETAILED ACTION

### ***Claim Rejections - 35 U.S.C. 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**1. Claims 1-17, 19, 21 and 29-33** are rejected under 35 U.S.C. 103(a) as being unpatentable over **alSafadi et al. (U.S. 6,467,088)** in view of **Weidner (U.S. 6,556,686)**.

Regarding claim 1, alSafadi teaches a method for controlling the reconfiguration of an electronic device, which reads on “a method for upgrading”; in **column 2, lines 34-37**, alSafadi teaches that using data from the electronic device, the reconfiguration manager is able to identify specific components currently implemented in the electronic device. The receipt of data provided by the electronic device to the upgrade server is interpreted as reading on “reading device information from the hearing device”; Given that alSafadi teaches that the device is upgraded in a digital environment, and since the information supplied by the electronic device to the reconfiguration manager is in the form of numerical data, said numerical data is interpreted by the Examiner as reading on “a serial number”, as broadly claimed; alSafadi further teaches that said data sent from the electronic device includes data used to identify certain components within the electronic device. These identifiers of components within the electronic device are interpreted as reading on “at least a model

indication", as broadly claimed. alSafadi therefore teaches "reading device information from the hearing device, the device information including at least a model indication and a serial number; sending the device information to the hearing aid upgrade server";

in **column 2, lines 53-60**, alSafadi teaches that the invention provides techniques for upgrading or otherwise reconfiguring electronic devices which is well suited for use with software upgrades delivered over a network, which reads on "via a network";

and in **column 2, lines 37-46**, alSafadi teaches determining identifiers of specific components of the electronic device from information supplied by the electronic device, doing a comparison to determine acceptable and unacceptable configurations and downloading new configurations accordingly, which reads on "upgrading the device based on the upgrade data." alSafadi teaches that the invention may be used for reconfiguration of software or other components of an electronic device such as a computer, PDA, set-top box, television, telephone or any other type of consumer electronic processing device (**see column 3, lines 16-21**) and therefore does not restrict to any particular device.

alSafadi does not clearly teach that the electronic device is a hearing aid device. Weidner teaches that there is a recognized need in the art for providing program adjustments in hearing aid devices for the purpose of adapting to the changing hearing behavior of its' wearer over time (**see column 3, lines 43-50**). In **column 4, lines 15-26**, Weidner further teaches that it is well known in the art to upgrade a hearing device using software which may be transferred to the hearing device with a programming tool.

Since both alSafadi and Weidner are concerned with a system for upgrading electronic consumer devices, it would have been obvious for one of ordinary skill in the art at the time the invention was made to combine the teachings of alSafadi and Weidner, which would permit the reconfiguration of hearing aid devices over a network, thereby more easily facilitating the upgrade of these complex devices (see, “BACKGROUND” in **alSafadi reference**).

Regarding claim 2, alSafadi teaches that the upgrading comprises programming the device in accordance with the data.

Regarding claim 3, shown in figure 3 and discussed in column 6, lines 1-9, alSafadi teaches the use of server (**210**) and client (**214**) machines for communication with the reconfiguration manager (**10**) and electronic device (**12**) via a network, which reads on “the method is preformed by a local programming station that operatively connects the upgrade server via network and wherein the local station is operatively connected to the hearing aid device.”

Regarding claim 4, in **column 2, lines 41-44**, Weidner teaches that the local programming station is provided at a hearing aid dispensing office.

Regarding claim 5, Weidner teaches that there is a recognized need in the art for providing program adjustments in hearing aid devices thereby adapting to changing hearing behavior of its’ wearer over time (see **column 3, lines 43-50**), which reads on “wherein the upgrading comprises programming the reprogrammable memory...”

Regarding claim 6, The combination of alSafadi and Weidner does not clearly teach that the programming of the hearing aid device operates to store an algorithm in

the hearing aid device so as to enhance sound signals. However, the Examiner takes Official Notice that programming via storage of algorithms is well known in the art and would have been obvious in computer-to-computer communications over a network, since algorithms permit the compression of data for the distribution of software across a computer network (see previously cited reference **Goldman 6,615,405**).

Regarding claims 7-9, The combination of alSafadi and Weidner teaches that the network is the Internet and the method is implemented by computer.

Regarding claims 10 and 32, as set forth in the rejection of claim 1 above, the combination of alSafadi and Weidner teaches a method for upgrading a hearing aid device comprising: connecting the hearing aid device (**12**) to a programming system (**figure 3** of alSafadi); reading device information from the hearing device, the device information including at least a model indication and a serial number; coupling the hearing aid programming system (**212,210**) to a remote upgrade server (**10**) through a network (**214**); requesting the upgrade based upon the device information; receiving at the programming system the requested upgrade for the hearing aid device through the network and installing the requested upgrade in the hearing aid device whereby the device operates in accordance with the upgraded software. Both alSafadi and Weidner teach upgrading the electronic device via software.

Regarding claim 11, in **columns 4-5**, alSafadi teaches determining whether the hearing aid device is suitable for upgrade based upon the device information.

Regarding claim 14, Both, alSafadi and Weidner appear to teach that the consumer electronic device, a hearing device as specifically taught by Weidner, is reprogrammable (for support, see **column 3, lines 43-50** in the Weidner reference).

Regarding claim 15, The combination of alSafadi and Weidner teaches that said programming of the reprogrammable memory operates to store upgraded software in the device, the software being used to enhance sound signals for the user.

Regarding claim 16, alSafadi teaches that the network is the Internet.

Regarding claim 17, alSafadi teaches that reading is performed by electronically reading the device information.

Regarding claims 12,13 and 33, the combination of alSafadi and Weidner, does not specifically teach that a password is required for entry to the hearing aid programming system. However, the Examiner takes Official Notice that the use of a password for access to a computer or to network servers, are well known in the art for the purpose of protection against unauthorized usage.

Regarding claim 19, alSafadi teaches receiving a reconfiguration request and determining one or more device components that are required to implement the reconfiguration request from information supplied by the electronic device (**see, column 2, lines 28-37**), which reads on “requesting of the upgraded software send the device information to the remote hearing aid upgrade server”

Regarding claim 21, in **column 5, lines 36-39**, Weidner teaches the incorporation of an error message for the person who adapts the hearing device to the patient. The Examiner has interpreted this disclosure as indirectly teaching that when no

error has occurred, the fitting of the hearing device by the acoustician or otolaryngologist may continue and thusly be completed, which reads on "...displaying a notification message that the hearing device has been modified such that refitting is needed".

Regarding claims 29-31, as set forth in the rejection of claim 1,10,22 and 32 above, the combination of alSafadi and Weidner teaches upgrading electronic devices via computer through a network which may include global computer communications such as the Internet, and therefore teaches a computer readable medium including at least one computer program code for upgrading an electronic consumer device; said computer readable medium comprising: computer program code for reading device information from the hearing aid device reading device information from the hearing device, the device information including at least a model indication and a serial number; computer program code for coupling the hearing aid programming system to a remote hearing aid upgrade server; computer program code for sending the device information to a hearing aid upgrade server via a network and requesting upgrade software for the hearing aid device; computer program code for subsequently receiving upgrade data from the hearing aid upgrade server via the network, and in **column 2, lines 37-46**, alSafadi teaches determining identifiers of specific components of the electronic device from information supplied by the electronic device, doing a comparison to determine acceptable and unacceptable configurations and downloading new configurations accordingly, which reads on " the upgrade data being obtained at the hearing aid

upgrade server based on the device information"; and computer program code for upgrading the hearing aid device based upon the upgrade data.

2. Claim 22,23 and 25-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over alSafadi et al. (U.S. 6,467,088) in view of Weidner (U.S. 6,556,686) and further in view of Putvinski (WO/17819). Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over alSafadi et al. (U.S. 6,467,088) in view of Weidner (U.S. 6,556,686), as applied to claim 19 above, and further in view of Putvinski (WO/17819).

Regarding claims 20,22 and 26, the combination of alSafadi and Weidner teaches a method for upgrading a hearing aid device comprising: connecting the hearing aid device (12) to a programming system (figure 3 of alSafadi); reading device information from the hearing device, the device information including at least a model indication and a serial number; coupling the hearing aid programming system (212,210) to a remote upgrade server (10) through a network (214); requesting the upgrade based upon the device information; receiving at the programming system the requested upgrade for the hearing aid device through the network and installing the requested upgrade in the hearing aid device whereby the device operates in accordance with the upgraded software. Both alSafadi and Weidner teach upgrading the electronic device via software.

The combination of alSafadi and Weidner does not clearly teach that receiving comprises receiving returned device information from the remote hearing aid upgrade

Art Unit: 2643

server through the network, and wherein the installing operates to install the upgraded software in the hearing aid device only when the device information obtained by said reading matches the returned device information.

On page 6, lines 18-26, Putvinski teaches that the reprogramming of the memory of a hearing device includes sending device information to the upgrade source, that device information being indicative of the patient's identity. Upon locating that data corresponding to the device information i.e., patient identifier, the audiologist is required to confirm that the retrieved data matches that data which was initially used to locate the data for upgrade. It would have been obvious for one of ordinary skill in the art at the time of the invention to incorporate the step of Putvinski into the combined teachings of alSafadi and Weidner, for the purpose of isolating and confirming that data appropriate to the specific device for which information is being provided.

Regarding claim 23, alSafadi teaches that reading is performed by electronically reading the device information.

Regarding claim 25, alSafadi teaches that the device information includes at least a model indication and a serial number.

Regarding claim 27, the combination of alSafadi and Weidner, does not specifically teach that a password is required for entry to the hearing aid programming system. However, the Examiner takes Official Notice that the use of a password for access to a computer or to network servers, are well known in the art for the purpose of protection against unauthorized usage.

Regarding claim 28, in **columns 4-5**, alSafadi teaches determining whether the hearing aid device is suitable for upgrade based upon the device information.

***Response to Arguments***

**Applicant's arguments filed 3/5/2004 have been fully considered but they are not persuasive.**

3. Regarding the Applicant's argument that " alSafadi et al. has nothing to do with a hearing aid device or upgrade of a hearing aid device. Hence, alSafadi et al. does not teach or suggest device information from a hearing aid device...Moreover, alSafadi et al. does not teach or suggest receiving upgrade data from the hearing aid upgrade server via the network"

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

4. Regarding the Applicant's argument that: "there is nothing in alSafadi et al. that teaches or suggests to one of ordinary skill in the art that the reconfiguration manager described in alSafadi et al. could be utilized to upgrade a hearing aid device."

As stated in the rejection of claim 1, above, alSafadi teaches that the invention may be used for reconfiguration of software or other components of an electronic device such as a computer, PDA, set-top box, television, telephone or any other type of

consumer electronic processing device (**see column 3, lines 16-21**). In doing so, alSafadi does not restrict to the use of the invention with any particular electronic device.

5. Regarding the Applicant's argument with respect to claim 22 that "Further, there is nothing in alSafadi et al., Weidner or Putvinski that teaches or suggests "sending returned device information to the requesting device" or "comparing the returned device information with the device information for the hearing aid device available from said receiving of the device information." *Please see the discussion of newly amended claim 22 in the rejection, above.*

### ***Conclusion***

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled Comments on Statements for Allowance.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dionne Harvey whose telephone number is (703) 305-1111. The examiner can normally be reached on Monday through Friday from 8:30am to 6:00pm.

**Any responses to this action should be mailed to:**

Commissioner of Patents and Trademarks  
Washington, DC 20231

**or faxed to:**

(703) 308-6306, for formal communications for entry

Or:

(703) 308-6296, for informal or draft communications, please label

PROPOSED or DRAFT.

Hand delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA., Sixth Floor(Receptionist)

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Curtis

Application/Control Number: 10/037,766  
Art Unit: 2643

Page 13

Kuntz, can be reached at (703) 305-4708.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dionne Harvey whose telephone number is (703) 305-1111.

D.H.

January 7, 2005



CURTIS KUNTZ  
SUPERVISORY PATENT EXAMINER  
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